

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Bryngelson Corp.,
Petitioner-Appellant,

v.

Marshall County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 09-64-0276
Parcel No. 07-26-277-006

On June 23, 2010, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant, Bryngelson Corporation, submitted evidence in support of its petition and was self-represented by Berdette (B.O.) Bryngelson. The Board of Review designated attorney Brett Ryan of Willson & Pechacek, PLC, Council Bluffs, Iowa, as its legal representative. The Board of Review submitted evidence in support of its decision. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Bryngelson Corporation (Bryngelson) appeals from the Marshall County Board of Review decision reassessing its property located at 709 N. 4th Avenue, Marshalltown, Iowa. According to the property record card, the subject property consists of a one-story, frame, four-family conversion having 1328 square feet of living area, a full basement with 1000 square foot of finish, and a 72 square-foot, enclosed porch. The dwelling was built in 1920 and is situated on a 0.17 acre site. The real estate was classified as commercial on the initial assessment of January 1, 2009, and valued at \$10,030, representing \$5200 in land value and \$4830 in improvement value.

Bryngelson protested to the Board of Review on the ground that the property was assessed for more than authorized by law under Iowa Code section 441.37(1)(b). In its opinion, the property has no value. The Board of Review denied the petition.

Bryngelson then appealed to this Board and reasserted its claim of over-assessment. He also asserted a claim based on inequitable assessment under section 441.37(1)(a). Since the claim of inequitable assessment was not raised before the Board of Review, we can not now consider this claim. Bryngelson contends the property has no value because fire damage rendered it uninhabitable, vacant, and generating no income.

Mr. B.O. Bryngelson testified fire had completely destroyed the front half of the house and the roof, siding, and windows were damaged. He reports burnt cinders and water caused further damage to the rest of the property. Bryngelson reports the city requires new breaker boxes and updated electrical service to the property before the property can be occupied. He estimates it will cost between \$40,000 and \$50,000 to repair the property and bring it up to code based on his years of experience as a contractor. Bryngelson testified he offered to sell or give the property to Habitat for Humanity and it declined his offers. He estimates it will cost \$10,000 to demolish the building, remove the debris, and fill in the excavation site. The property was not insured and he indicated he had no funds available to rebuild. Bryngelson testified despite the property being vacant and generating no income, there are continuing expenses for water, sewer, electric, and taxes creating a negative cashflow.

Assessor Craig Madill testified on behalf of the Board of Review. He reported the fire occurred in the fall of 2008, and he reduced the value on the subsequent reassessment date of January 1, 2009. He indicated the problems with the property reported by Bryngelson were taken into account in the assessment and considered by the Board of Review in the protest. A letter from the Marshalltown Housing & Community Development obtained by Madill states the subject property has

not been declared dangerous and dilapidated by building officials, and currently may be either renovated or demolished by the owners. Madill testified the property was basically assessed at only its salvage value. In his opinion, it should not be further reduced by the cost of repairs as requested by Bryngelson.

Testimony suggested the commercial property classification should be reconsidered in light of the fact there may be only two rental units in the building. Under Iowa law, buildings primarily used or intended for human habitation with less than three separate living quarters are considered residential real estate. Buildings with three or more separate living quarters are considered commercial real estate under rule 701-71.1(4). Residential real estate is subject to the residential rollback which reduces taxable value, whereas commercial property is assessed normally at or near 100% of fair market value. §§ 441.21(4-5). This distinction significantly effects valuation and tax liability.

Reviewing all the evidence, we find that Bryngelson did not provide sufficient evidence to establish the subject property is assessed for more than authorized by law nor did it present credible evidence to establish its fair market value either by sales comparison, an appraisal, or income approach valuation as of January 1, 2009.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2009). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all

of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. *Id.* "Market value" essentially is defined as the value established in an arm's-length sale of the property. § 441.21(1)(b). Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property "shall be one hundred percent of its actual value." § 441.21(1)(a).

In an appeal that alleges the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(b), there must be evidence that the assessment is excessive and the correct value of the property. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). The evidence does not support a finding the Bryngelson property is assessed for more than fair market value. We recognize the significant property damage sustained in the fire lessened its value, however the 2008 total assessment of \$27,076 was reduced to \$10,030 in 2009 to reflect the fire damage. We were offered no credible evidence supporting a lesser value.

Therefore, we, affirm the Bryngelson property assessment as determined by the Board of Review. The Appeal Board determines that the property assessment value as of January 1, 2009, is \$10,030, representing, \$5200 in land value and \$4830 in improvement value.

THE APPEAL BOARD ORDERS that the January 1, 2009, assessment as determined by the Marshall County Board of Review is affirmed.

Dated this 3 day of AUGUST 2010.

Jacqueline Rypma
Jacqueline Rypma, Presiding Officer

Karen Oberman
Karen Oberman, Board Chair

Richard Stradley
Richard Stradley, Board Member

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Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>8.3.10</u>	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier <input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
Signature	<u>[Signature]</u>